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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JORGE C., a Person Coming
Under the Juvenile Court Law.

B286747
(Los Angeles County
Super. Ct. No. DK22375)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JORGE C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County,
Veronica McBeth, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant
County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for
Plaintiff and Respondent.

Father Jorge C., Sr., is the father of the child at issue in this appeal, Jorge C. (Jorge, born November 2007), as well as Jorge's older half-sister, Princess (born February 2000), who is not at issue and whom we mention only as necessary to describe the relevant evidence.¹ Jorge's and Princess's mother died in 2014, while father was incarcerated. Further, he remained incarcerated throughout the relevant events in this case. Before her death, mother left the care and custody of Jorge and Princess to Roberto N., father's adult brother. Roberto was unable to provide appropriate care, leading the Los Angeles Department of Children and Family Services (the Department) to file a petition alleging under Welfare and Institutions Code section 300, subdivision (b)(1),² that Jorge was at risk of serious physical harm because he had no parent to provide care. Proceeding under section 360, subdivision (b),³ the juvenile court amended the petition to allege in addition that father had made no plan for Jorge's care, found that Jorge was at risk of harm under section 300, subdivision (b), ordered a plan of informal supervision (with monitored supervision and reunification services for father), and set a progress report date.

¹ Father has a lengthy felony and misdemeanor criminal history.

² All section references are to the Welfare and Institutions Code.

³ Section 360, subdivision (b) provides: "If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301."

In this appeal by father,⁴ he contends: (1) the evidence does not support the jurisdictional finding that Jorge was at risk of serious physical harm based on father's failure to make a plan for his care; (2) the court erred in its dispositional order under section 360, subdivision (b), in setting future court dates rather than leaving supervision of the matter to the Department; and (3) the court erred in the specific case plan in the dispositional order. As we explain, we find the evidence sufficient to support the juvenile court's jurisdictional finding. Further, based on developments in the case since the orders at issue (namely, a superseding order declaring Jorge a dependent child and denying father reunification services, of which we take judicial notice), we find father's challenges to the dispositional order are moot. We therefore affirm.

BACKGROUND

Circumstances Leading to the Petition

In February 2017, the Department received a referral regarding Jorge and Princess. The report alleged that the mother was deceased, that father had been deported years earlier, and that the children had been left in the care of Roberto, father's adult brother, who was not providing proper care, including food and clothing.

The assigned social worker was informed by a social worker from Princess's high school that Roberto had stopped answering telephone

⁴ An order under section 360, subdivision (b) is appealable. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1260-1261 (*Adam D.*).

calls and did not return calls. He had not facilitated mental health services for Princess, failed to provide clothing or financial assistance, and was unwilling to give Princess her Medi-Cal card or social security card. The school social worker reported the child's paternal grandmother was struggling financially, and she had provided the paternal grandmother gift cards, resources, and clothing for the child.

Princess confirmed that Roberto refused to relinquish her social security card and give her money. She said that her paternal grandmother was struggling financially. Princess called living with Roberto a disaster. She said she suffered from depression and just wanted to "shut down."

The social worker contacted Roberto and they agreed to meet at Jorge's school on February 9, 2017. When the social worker went to Jorge's elementary school in Long Beach, she was informed he was not in school because he had been referred to the School Attendance Review Board (SARB) based on his chronic absences: 29 absences from October 4, 2016, to February 8, 2017. A counselor reported that Roberto misled the school. He once confirmed an address where he claimed the family was living, when actually the family had moved out months earlier.

Roberto was also not at the school to meet the social worker. When the social worker called Roberto, he said he had dropped Jorge off, could not explain why he did not wait for the social worker, and denied scheduling a meeting. He said that he was not receiving financial assistance for Princess, denied withholding Princess's documents, denied having been evicted (he said he moved because the landlord did

not address a bed bug infestation), and claimed he was staying with a cousin in Lakewood but was on a waitlist for section 8 housing. He complained that it was difficult to get Jorge to school in Long Beach while they were staying in Lakewood. He admitted that he was homeless and had no job or mode of transportation. He agreed to meet with the social worker on February 13, 2017.

When the social worker spoke to Jorge, he appeared clean but had a faint foul odor as if he had not showered in a few days. He claimed he showered daily. Jorge reported he lived with his aunt, cousins and Roberto. Jorge explained he missed a lot of school because he woke up early but then fell back to sleep. He said he felt safe with Roberto and did not fear him.

On February 13, 2017, the social worker went to Jorge's school to meet Roberto and discovered the school was not open because it was a holiday. When the social worker called Roberto, he claimed he was not available and blamed the social worker for not knowing school was out that day. Roberto refused to tell the social worker where he was living. The social worker said she would be at Jorge's school on February 14, 2017, and expected to speak with Roberto there. However, Roberto failed to appear for the meeting, and the social worker left him a detailed message.

On February 28, 2017, the social worker spoke with Jorge's maternal second cousin, Jennifer H., who reported Jorge had been in her care for the last couple of weeks. Since mother's death, she and Roberto had shared taking care of Jorge. Jennifer believed Roberto was

receiving financial assistance and had claimed the children on his income taxes. Jennifer believed that Roberto had “no idea how to take care of a family,” and was collecting money for the children but not taking care of them. Jennifer (who lived with her girlfriend) said that her work interfered with caring for Jorge and she received no help. She was not ready to be a full-time parent and asserted that Roberto was taking advantage of her and not taking responsibility for the child. Jorge needed dental work, eye glasses, and a medical checkup, but Roberto would not take him. Jennifer said she would be taking the child to his appointment for glasses. Although Jennifer had never seen Roberto drink or use drugs, he seemed sometimes under the influence by the way he acted and the things he said. She said that she could not believe anything Roberto told her because he constantly lied. She confirmed that he had been evicted from his last apartment for not paying the rent. He was now living with their aunt, but was asked to leave because he did not help around the house.

On March 15, 2017, the social worker held a Child and Family Team (CFT) meeting at the Department’s office. The social worker had left a voice mail informing Roberto of the meeting. Jorge’s paternal grandmother attended the CFT meeting, among other relatives, but Roberto did not. At the meeting, the social worker reported that it appeared neither Roberto nor anyone else was a court-appointed legal guardian for Jorge and Princess, and that Roberto appeared unwilling or unable to take care of the children. The paternal grandmother indicated

that she was willing to continue caring for Jorge and would seek legal guardianship through family court.

After the CFT meeting, Roberto called the Department. The social worker noted he sounded intoxicated, slurring his speech and misusing words. Roberto claimed he had proof he was Jorge's legal guardian and that he had shown it to a previous social worker. He agreed to show the papers to the current social worker. After he lost his apartment, he told the paternal grandmother to "do her job as a grandmother and take care of" Jorge. He said he checked in on Jorge from time to time but had no information on Princess and blamed her for his involvement with the Department.

On March 23, 2017, Jennifer expressed an interest in obtaining legal guardianship of Jorge and indicated she and the paternal grandmother would have to work something out. A joint guardianship was discussed and Jennifer indicated she would go the next day to the courthouse to file for legal guardianship. However, Jennifer later had difficulty filing the papers and expressed concerns about the financial cost of the child, as well as how caring for Jorge would impact her relationship with her girlfriend.

Meanwhile, in a telephone conversation with the social worker, Roberto began to yell, claimed he had full custody of Jorge, and told the social worker to stop harassing the child. When the social worker asked Roberto to provide documentation supporting his claim, he refused. Roberto was stuttering and not always making sense. The social worker terminated the call.

Thereafter, when the supervising social worker made an unannounced visit to the paternal grandmother's residence, the paternal grandmother preferred to talk outside the home. She explained that Roberto had picked Jorge up earlier and taken him to eat. Jorge, who was present with the grandmother, spoke in a quiet, low voice and said things were fine at the paternal grandmother's residence. The paternal grandmother said the child once went four days without showering, and she had to talk to him about proper hygiene.

The paternal grandmother reported that father was being released from prison in August 2017, and she did not know what he would do when he returned home. Roberto was providing no money or clothing for Jorge.

On April 4, 2017, the social worker received a text message from Jennifer indicating she had decided to take full custody of Jorge but had some questions and concerns. She asked to speak later in the day.

On April 5, 2017, the social worker informed the paternal grandmother of the plan to place the child with Jennifer, and informed her that the Department had tried to work with Roberto but he had not made himself available. The paternal grandmother objected to the fact that Jennifer lived with her girlfriend.

When the social worker arrived to take custody of Jorge, the paternal grandmother reported that Roberto had taken the child. The social worker said that allowing Roberto to take Jorge was inappropriate, and the paternal grandmother admitted she was afraid of Roberto. The social worker told her that the Department would be

seeking a protective custody warrant and to contact the social worker if she heard from Roberto.

On April 10, 2017, the social worker received a text message from Jennifer stating that Jorge was now in her care. Later, during a text exchange between Roberto and the social worker, Roberto refused to provide the address where he resided.

Petition and Proceedings Before Adjudication

On April 10, 2017, the Department filed a section 300 petition alleging Jorge was at risk of neglect and serious physical harm as the result of having no parents able to provide him with ongoing care and supervision, as mother was deceased and father was incarcerated.

At the detention hearing on April 10, 2017, the juvenile court ordered Jorge removed from father's custody (father having legal, though not physical, custody), placed Jorge in Jennifer's home, and ordered that Roberto's visits with Jorge be monitored.

At Jennifer's home, Jorge was well-cared for and content. In an interview in May 2017, Jorge reported he last saw father three years earlier when he was six years old. He said after mother died, he and Princess resided with Roberto. The Department attempted to interview father but could not reach his counselor in prison. The Department sent father a copy of the detention report, the detention hearing minute order, and blank paper and several stamped self-addressed envelopes so he could contact the agency.

When interviewed, the paternal grandmother provided a letter from father in which he said that he wanted Jorge to live with the paternal grandmother. Father also indicated he expected to be released from prison in September or October 2017.

The paternal grandmother reported father had been incarcerated prior to mother's death in 2014. The paternal grandmother said when mother died, mother left the children with Roberto, although Roberto had dropped off Jorge at her residence a month before the Department detained the child. She did not understand why he was detained.

Jennifer told the Department that she had a very close relationship with mother throughout her life until the time of her death. She said father "didn't take care of little Jorge" when mother was alive. She also reported father was "very abusive" towards mother during their relationship, and she personally witnessed mother's physical injuries caused by father.

Jennifer reported that Roberto had been unable to take care of Jorge and Princess after mother died and that he often called her to care for the children when his electricity and gas were shut off for non-payment. She believed Roberto was receiving welfare benefits but was unsure how he managed the family's resources. Jennifer denied having contact with Roberto for over a month since he dropped Jorge off at her home. Jennifer also reported Jorge had not undergone a dental exam since mother died three years earlier. The child had attended school daily since being placed in her care. He was scheduled to start grief counseling soon.

Jurisdictional Proceedings

The adjudication hearing began on August 21, 2017. Father was present in custody, represented by counsel. The court admitted the Department's reports into evidence. It then heard argument from counsel.

Father's attorney argued father had made a plan for Jorge while he was incarcerated in that the child was in Roberto's care, and that father's letter asking the court to place Jorge in custody with the paternal grandmother constituted a plan of care for the child. He also said father intended to resume custody of the child once he was released from prison. Jorge's attorney noted that father had not cared for the child prior to his incarceration and that Roberto was unable to do so later. The Department argued father was incarcerated and had not made a plan for the child.

During the course of the hearing, the court noted that paternal grandmother had allowed inappropriate access to Roberto, and that father could not resume custody, because he had not previously had custody.

The court continued the hearing at the request of counsel.

In the interim, the social worker learned that father was due to be released on November 26, 2017. On August 28, 2017, the Department received a call from Mary Ellen S., who identified herself as father's girlfriend. She said father would be staying with her upon his release from custody and she was willing to have Jorge live with her as well.

She acknowledged having a prior open dependency case that she said was based on not having a stable living situation at the time. She said she had been renting a home for the previous four years.

In evaluating Ms. S. as being a suitable placement, the Department reported that it had received 25 prior referrals regarding Ms. S. between 2002 and 2017, including substantiated allegations of general neglect in 2010 and 2011 and general neglect and emotional abuse in 2014. Two referrals for general neglect in 2017 were evaluated out to other agencies. Ms. S. had five open juvenile court cases from 2004 to 2014.

Also, Ms. S. made a police report in June 2014 wherein she reported being beaten by father. Thereafter, in Ms. S.'s most recent proceedings, the juvenile court sustained allegations relating to Ms. S.'s and her male companion's domestic violence, Ms. S.'s excessively physically disciplining her child, her being unable to keep the family home in a sanitary condition in that mice were found in the home, and her failure to obtain treatment for a child's head lice. Ms. S. subsequently reunified with her children, although one of her children lived with a non-related legal guardian. The Department expressed concern regarding Ms. S. and father, given their histories.

On August 29, 2017, Jennifer told the Department that she was struggling with finances and lack of child care but did not want the child placed with father.

The Department recommended that the juvenile court sustain the petition, but not find that Jorge was a child described by section 300

and not find him to be a dependent of the court under that section. Rather, the Department recommended that Jorge be placed with Jennifer and be declared a dependant under section 360, subdivision (b) with a plan of informal supervision. Upon father's release, the Department recommended that father be given reunification services and monitored visitation, and that the court place Jorge and father under supervision for a period consistent with section 301.

Jurisdictional proceedings resumed on August 30, 2017. The court admitted the additional reports and heard additional argument from counsel. Jorge's attorney expressed support for the court proceeding pursuant to section 360, subdivision (b), and noted Jorge was thriving in Jennifer's care. She expressed concern based on father's history. Father's attorney argued that father had clearly expressed he wanted the child placed with the paternal grandmother and therefore had made a plan for Jorge while he was incarcerated. The attorney for the Department argued there was nearly a four-year time-frame when father had not made a plan and the child had to be removed from Roberto.

The juvenile court amended the petition to allege that father had failed to make a plan for Jorge's care, and sustained the petition as amended. The court proceeded by way of section 360, subdivision (b) with a plan of informal supervision, and ordered father to complete a parenting course, random drug testing, and anger management. The court continued the proceedings for six months, and stated that if father

completed the programs, the case would be dismissed. The court also set an interim date for a progress hearing.

DISCUSSION

Father contends that the evidence was insufficient to prove that Jorge was at risk of serious physical harm or illness under section 300, subdivision (b)(1), based on father's failure to make a plan for Jorge's care. He also contends that the juvenile court erred under section 360, subdivision (b) in setting future court dates and in the specifics of the case plan. We conclude that the evidence supports the jurisdictional finding and that the challenges to the disposition order are moot. We begin with a description of proceedings under section 360, subdivision (b).

Section 360, subdivision (b)

In *Adam D.*, *supra*, 183 Cal.App.4th 1250, the court explained the nature of proceedings under section 360, subdivision (b): “‘The court may . . . determine on its own or following a request by one of the parties that even though it has jurisdiction [under section 300], the child is placed in the home, and the family is cooperative and able to work with the social services department in a program of informal services without court supervision that can be successfully completed within 6 to 12 months and which does not place the child at an unacceptable level of risk. In such cases the court may order informal services and supervision by the social services department instead of declaring the child a dependent [citations].’ [¶] ‘If informal supervision

is ordered pursuant to [section 360, subdivision (b)], the court “has no authority to take any further role in overseeing the services or the family unless the matter is brought back before the court” pursuant to [section 360, subdivision (c)]’ [citations]. The court’s lack of authority to take a further role in overseeing the services or the family is understandable, since if the court felt a need to supervise the matter it would have declared dependency. [¶] ‘If the court agrees to or orders a program of informal supervision, it does not dismiss the dependency petition or otherwise set it aside. The true finding of jurisdiction remains. It is only the dispositional alternative of declaring the child a dependent that is not made. This is because if the family is unwilling or unable to cooperate with the services being provided, the social worker may institute proceedings pursuant to [section 332], alleging that a previous petition has been sustained and that informal supervision was ineffective. [Citing § 360, subd. (c).] After hearing the petition, the court may either dismiss it or order a new disposition hearing’ [Citation.]” (*Adam D.*, *supra*, 183 Cal.App.4th at pp. 1259-1260.)

Sufficiency of the Evidence

We turn to father’s contention that the evidence was insufficient to support jurisdiction.

Of course, we review the juvenile court’s jurisdictional finding for substantial evidence, reviewing the record in the light most favorable to the order, and drawing all reasonable inferences in support. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.)

Section 300, subdivision (b)(1) provides in relevant part that jurisdiction is appropriate when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.” “[Section 300, s]ubdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823, criticized on other grounds by *In re R.T.* (2017) 3 Cal.5th 622, 629.)

In the instant case, the juvenile court sustained the petition under section 300, subdivision (b)(1) based on the allegations that Jorge was at risk of serious physical harm because mother was deceased, father was incarcerated, and father had no plan for Jorge’s care.⁵ Father contends that substantial evidence does not support the jurisdictional finding because: (1) Jorge was never left without care—he was in Roberto’s care, then the paternal grandmother’s care after Roberto left him there; (2) father made a plan for Jorge’s care in that he informed

⁵ We note that the Department did not rely on section 300, subdivision (g) for jurisdiction. That provision permits jurisdiction when “the child’s parent has been incarcerated or institutionalized and cannot arrange for the care of the child.” Therefore, fathers’ reliance on decisions concerning the requirements of this section—that because of incarceration the parent cannot arrange for care of the child—do not apply. (See, e.g., *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662, 673.) Here the question was not whether father was capable of arranging care, but whether the evidence proved that despite his proposed plan (placement with the paternal grandmother) Jorge remained at significant risk of physical harm.

the Department that he wanted Jorge to be placed with paternal grandmother; and (3) there is no evidence that placement with the paternal grandmother was not suitable.

As for father's first contention that Jorge was never without care, father simply ignores the nature of the "care" provided by Roberto and paternal grandmother. The record is replete with examples of Roberto's abject failure as a custodian, leading to substantial risk of serious physical harm or illness. For instance, according to Jennifer, Jorge needed dental work, eye glasses, and a medical checkup, but Roberto failed to take him for such care during the entire time he had physical custody. Obviously, failing to take responsibility for a young child's basic medical, eye, and dental care places the child at substantial risk of physical harm or illness from potentially undiagnosed and untreated conditions. Roberto's treatment of Princess also suggested the danger that faced Jorge. Roberto had physical custody of both Jorge and Princess. Roberto failed to facilitate mental health services for Princess and failed to provide clothing or financial assistance. Princess described living with Roberto as a disaster (including occasions of physical discipline). She said she suffered from depression and just wanted to "shut down." From this evidence, it is clear that in Roberto's care, Jorge (just like Princess) was at serious risk of significant physical harm or illness.

Roberto ultimately left Jorge in the care of the paternal grandmother. But placement with the paternal grandmother proved very problematic. When the social worker informed the paternal grandmother of the plan to place the child with Jennifer, and informed

her that the Department had tried to work with Roberto but he had not made himself available, the paternal grandmother objected (because Jennifer lived with her girlfriend). When the social worker arrived to take custody of Jorge, the paternal grandmother reported that Roberto, whom she feared, had taken the child. That paternal grandmother allowed Jorge to be returned to the custody of Roberto (who she knew was unable to properly care for Jorge), rather than with Jennifer (in whose occasional care Jorge was safe and attended to) demonstrated a significant lack of judgment that placed Jorge at substantial risk of harm or illness from Roberto's continued neglect. Thus, the evidence supported a conclusion that Jorge was left without care that would protect him for a substantial risk of serious physical harm or illness.

Our resolution of father's first contention also disposes of his second and third contentions—that he made a plan for Jorge's care (the paternal grandmother), and that there is no evidence that placement with the paternal grandmother was unsuitable. Paternal grandmother proved herself unsuitable based on her demonstrated willingness to place Jorge's care with Roberto (whether from fear of Roberto, disapproval of Jennifer, or both), and thus a plan to place Jorge in her care was not an effective plan at all.

To the extent father also argues, in substance, that he was treated unfairly because he was incarcerated and had no reason to know about Roberto's failures as a custodian, we disagree. Father's incarceration did not prevent him from at least inquiring of his mother, Roberto, or Jorge, by telephone or in writing, about the quality of Jorge's care.

Jennifer reported that father did not take care of Jorge *before* mother's death, and that father physically abused mother. Jorge reported that he last saw father three years earlier. In short, father demonstrated, at best, a negligible interest in Jorge. Substantial evidence supports the juvenile court's jurisdictional order.

Disposition Order

On August 30, 2017, in its disposition order of informal supervision under section 360, subdivision (b), the court ordered father to complete a parenting course, random drug testing, and anger management. The court continued the proceedings for six months, and stated that if father completed the programs, the case would be dismissed. The court also set an interim date for a progress hearing.

The court's continuing supervision of the case was erroneous. As we have noted, when the court orders informal supervision under section 360, subdivision (b), the court has no further authority to oversee the case. However, if the parent fails to cooperate with the services provided by the Department, the Department can file a petition "pursuant to Section 332 [to commence proceedings] alleging that a previous petition has been sustained and that disposition pursuant to subdivision (b) has been ineffective in ameliorating the situation requiring the intervention of child welfare services. Upon hearing the petition, the court shall order either that the petition shall be dismissed or that a new disposition hearing shall be held pursuant to subdivision (d)." (§ 360, subd. (c).) "If the court finds that the child is a person

described by Section 300, it may order and adjudge the child to be a dependent child of the court.” (§ 360, subd. (d).)

On the Department’s motion, we have taken judicial notice of the juvenile court’s order dated May 16, 2018, in which the court proceeded to disposition on the petition, declared Jorge a dependent child under section 300, and denied family reunification services to father.

Although the procedure used was not in compliance with section 360, subdivisions (c) and (d), in that the court proceeded to disposition on the original petition (rather than on a new petition filed by the Department), father has suffered no prejudice. He would be in no better situation had a new petition been filed as authorized by section 360, subdivision (c), and had the court declared Jorge a dependent child on that petition as authorized by section 360, subdivision (d). Further, because the August 30, 2017 order has been superseded by the May 16, 2018 order declaring Jorge a dependent child under section 300 and denying father reunification services, we can grant no practical relief. Reversing the August 30, 2017 order and remanding with instructions to fashion a new disposition order under section 360, subdivision (b) (in which the court would impose no case plan and no future court dates) would be pointless. Thus, we conclude that father’s challenges to the August 30, 2017 disposition order are moot. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404 [where reversal would have no practical effect because of subsequent events, the appeal is moot].)

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DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

MANELLA, P. J.

MICON, J.*

*Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.